IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5262 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

SALIMBHAI ALIBHAI SHEIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5262 of 2002

MR MR PRAJAPATI for Petitioner No. 1

MR HR PRAJAPATI for Petitioner No. 1

MR HH PATEL Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 08/07/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner, Surat City dated

11.10.2001 in exercise of powers vested under him by sub-section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

The petitioner has been branded as dangerous person within the meaning of sec. 2(c) of the PASA Act as he has been found involved in offence against the property punishable under sec. 380, 454, 457 and 114 of IPC. He has been arrested for three such offences and in one of the offence, the police recovered muddamal worth Rs. 1,71,000/. The first offence registered against the petitioner was on 27.3.2001 and the last one i.e. third offence was registered on 31.8.2001. The sponsoring authority had also placed statements of two unnamed witnesses wherein both these witnesses have named 4 persons involved in similar type of activities. As per the statements, all the four accused had created fear and terror in the mind of the witness and he was threatened on 26.5.2001. Second witness was also handled similarly on 12.6.2001.

On careful consideration of all the relevant dates , the court finds that both these dates given by the two unnamed witnesses are the date which has no connection with the dates of the commission of the three registered offences. The unregistered offences narrated by all these witnesses are totally different in nature as these offences are the offences against the body of a person. The careful perusal of the papers served to the detenu, the court feels that these two statements does not strengthen the case of the detaining authority put forward for recording the subjective satisfaction. Of course, the affidavit-in-reply tendered today explicitly says that the authority has considered the documents relating to three cases registered against the detenu very carefully and all papers are carefully scrutinized by the authority before recording the subjective satisfaction, but if the registered offences are taken as they are, it would be difficult to accept that the alleged activities of the petitioner can be said to be any way prejudicial to the maintenance of public order. In more than one case, placing reliance on the decision in the case of Mustakmiya Jabbarmiya vs. M.M. Mehta, Commissioner of Police, reported in 1995(3)SCC p. 237 and subsequent decisions, this Court has held that such type of activities can be said to be prejudicial to the maintenance of law and order and not the public order. Mr. Prajapti has rightly submitted that the present petitioner is entitled to be released and set at liberty forthwith only on the count that similarly situated

co-accused-cum-detenu has been set at liberty by this court vide decision dated 6.5.2002, in Special Civil Application No. 3582 of 2002 filed by Suresh @ Ramesh Ramko Valji Patel. His name is at sr. no. 2 in the description of the persons in the statements of unnamed witnesses and the present petitioner is at last i.e. 4th man in the given description of all the persons involved in the unregistered crime.

Ld. AGP Mr. HH Patel has placed reliance on the decision in the case of Amanulla Khan Kudeatalla Khan Pathan vs. State of Gujarat & Ors., reported in (1999)5 SCC 613 and has submitted that only one incident may be found sufficient in detaining a person and every thing depends on the magnitude of the activities and its effect on the even tempo of life of the society at large. Cited case is based on the different set of facts where the accused was found responsible in extorting money. So, on the facts, the ratio of this decision would not help the respondent-State.

Considering the factual matrix of the present case, the court is of the view that the Police Commissioner of Surat City has not exercised his powers appropriately in detaining the present petitioner. It goes to the root of the validity of the order. So, the same shall have to be quashed.

In the result, this petition is allowed. The impugned order of detention dated 11.10.2001 passed by Police Commissioner, Surat city is herebys quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)
mandora/